# NOMINATIONS OF BEVIS LONGSTRETH AND JAMES C. TREADWAY, JR.

## HEARING

BEFORE THE

## COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

THE NOMINATIONS OF

BEVIS LONGSTRETH TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 1984, AND JAMES C. TREADWAY, JR., TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 1987

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# CONTENTS


| Statements of: | Page |
|---|---|
| Chairman Garn | 1 |
| Senator Strom Thurmond | 2 |
| Bevis Longstreth | 3 |
| Resume of James C. Treadway, Jr. | 2 |
| Letter from Bevis Longstreth to Senator Proxmire | 24 |
| Excerpt from transcript of meeting of Securities and Exchange Commission | 24 |
| Biographical material on: | |
| Bevis Longstreth | 27 |
| James C. Treadway, Jr. | 41 |

# NOMINATIONS OF BEVIS LONGSTRETH AND JAMES C. TREADWAY, JR.

FRIDAY, AUGUST 13, 1982

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
*Washington, D.C.*

The committee met at 9:30 a.m. in room 5302, Dirksen Senate Office Building, Senator Jake Garn, chairman of the committee, presiding.

Present: Senators Garn, D'Amato, Proxmire, and Sarbanes.

## OPENING STATEMENT OF CHAIRMAN GARN

The CHAIRMAN. The committee will come to order. The Banking Committee traditionally starts on time but due to the fact that both witnesses and Senator Thurmond are here, we will start a couple minutes early this morning.

This hearing is for the purpose of considering the nominations of Bevis Longstreth and James Treadway to be members of the Securities and Exchange Commission.

Commissioner Longstreth has been nominated to fill the unexpired term which expires on June 5, 1984. Mr. Treadway has been named to the term expiring June 5, 1987.

Questions have been raised concerning Commissioner Longstreth's participation in the SEC's decision on December 22, 1981, not to institute an enforcement action against Citicorp and, indeed, Commissioner Longstreth's opening statement discusses this matter. I intend to ask some questions regarding this subject and other members of the committee may do so as well. I believe that a public discussion of these questions is appropriate and worthwhile for two reasons.

First, the commitments made by appointees during the confirmation process are of crucial importance to this committee in assuring the nominees whom we approve perform their duties honestly and with integrity as well as completely.

Second, public suggestions about Commissioner Longstreth's participation in the Citicorp decision deserve our examination. Equally important, Commissioner Longstreth deserves an opportunity to discuss with this committee his perspective on these matters. In that regard, I should note that he's made clear to the committee for some time both his willingness and his desire to do so.

Based on all of the available information, I've reached the conclusion that Commissioner Longstreth's participation in the SEC's decision was fully consistent with the statements which he made to the committee during his confirmation hearing. These statements

were comparable to those filed by other recent attorney appointees to the Commission over the past several years.

Senator Thurmond, if you would—I know you're pressed for time—if you'd like to make your introduction now, we'd be happy to hear from you.

## STATEMENT OF STROM THURMOND, U.S. SENATOR FROM SOUTH CAROLINA

Senator THURMOND. Thank you very much, Mr. Chairman and gentlemen of the committee.

Today I am pleased to introduce Mr. James C. Treadway, Jr., who has been nominated by President Reagan to be a member of the Securities and Exchange Commission.

As an attorney specializing in the area of corporate finance, Mr. Treadway is very qualified to serve as a member of this Commission. For the past 14 years, he has represented clients from many sectors of the financial community, including private and public companies, regional securities exchanges, domestic and foreign banks, and investment banking firms. He is very knowledgeable in his field and has demonstrated a dedication to high principles and diligent work.

With regard to his personal background, Mr. Treadway is a native of Union, S.C. He received his undergraduate degree in economics from the University of Georgia in 1964. Three years later, he graduated summa cum laude from the school of law at Washington and Lee University, where he served as editor-in-chief of the Law Review. During his academic career he was inducted into Phi Beta Kappa, Omicron Delta Kappa and the Order of the Coif.

After graduating from law school, Mr. Treadway practiced with two law firms before joining the firm of Dickstein, Shapiro and Morin in Washington, D.C., in 1972. He is now a partner in this firm and a member of its executive committee.

Mr. Chairman, I was pleased to recommend Mr. Treadway to President Reagan for appointment to the Securities and Exchange Commission. He is a fine young man, and I know that he will serve our Nation well on this Commission.

Mr. Chairman, I ask unanimous consent that a more detailed biographical résumé of Mr. Treadway be included in the record of this hearing.

The CHAIRMAN. Without objection.

[Material received for the record follows:]

### RÉSUMÉ OF JAMES C. TREADWAY, JR.

#### PERSONAL DATA

Home address: 4715 Fulton Street, N.W., Washington, D.C. 20007, Telephone: (202) 362-4330.

Business Address: 10th Floor, 2101 L Street, N.W., Washinton, D.C. 20037, Telephone: (202) 828-2230, (202) 785-9700.

Marital status: Married to Susan Pepper Davis Treadway; 2 daughters, ages 9 and 6.

Age: 39, born May 21, 1943 Anderson, S.C.

Party affiliation: Republican.

PROFESSIONAL BACKGROUND AND EXPERIENCE

Practicing attorney. Partner in law firm of Dickstein Shapiro & Morin, Washington and New York, from 1972 to present. Member of firm's executive Committee.

Associate, Gadsby & Hannah, Washington and Boston, 1968-1972.

Associate, Candler, Cox, McClain & Andrews, Atlanta, Ga., 1967-1968.

Primary concentration in corporate finance matters, including practice involving the federal securities laws, banking and savings & loan law, general corporate matters, and, to a lesser extent, tax matters related to the foregoing specialized areas. My practice includes such matters as private and public debt and equity financings, corporate mergers, acquistions, and reorganizations, regulation of financial institutions, participation in legislative and rule-making proceedings, and representation of both corporate and individual clients in hearings, investigations, and enforcement proceedings. More recently (during the past 2 or 3 years), I have spent a substantial amount of time involved in conversions of savings & loan associations from mutual to stock form, in addition to the other corporate finance matters referred to above.

Representative clients include both public and private commerical and industrial companies, a regional securities exchange, domestic and foreign banks, investment banking firms, pension funds, a major mutual fund complex, and various attorneys, officers, directors, and other individuals connected with the above.

EDUCATION AND PROFESSIONAL MEMBERSHIPS

Undergraduate Education: Rollins College and University of Georgia (1961-1964), economics major.

Legal Education: Washington & Lee University (1964-1967); law degree awarded summa cum laude; graduated first in law school class.

Member of Phi Beta Kappa, Omicron Delta Kappa, Order of the Coif. Editor-in-Chief, Washington & Lee University Law Review (1966-1967).

Author of various articles dealing with the federal securities laws; Speaker at various seminars dealing with securities, tax, and other financial matters.

Member, American Bar Association, District of Columbia, Massachusetts, and Georgia Bar Associations.

Senator THURMOND. I have an Armed Services Conference Committee and need to go there, but if you have any questions I'd be glad to try to answer them.

The CHAIRMAN. Senator, we appreciate you being here this morning and I would have been terribly surprised if you didn't have another committee meeting to go to knowing what all of our schedules are. So we thank you for coming and we want to excuse you to save the country and the armed services.

Senator THURMOND. Thank you very much.

The CHAIRMAN. Senator Proxmire, do you have an opening statement?

Senator PROXMIRE. I have no opening statement. I have some questions.

The CHAIRMAN. Gentlemen, before you start, can I have you both stand and be sworn.

[Witnesses sworn.]

The CHAIRMAN. Mr. Longstreth, do you have an opening statement you would like to begin with?

Mr. LONGSTRETH. Yes, I do.

## STATEMENT OF BEVIS LONGSTRETH, COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION

Mr. LONGSTRETH. I appreciate this opportunity to appear before you today. Since my last appearance here a little more than a year ago, I have learned a great deal about being a Commissioner and I believe I have contributed to the work of the Commission. During this period, the Commission was faced with many difficult issues including the possible repeal of the Public Utility Holding Compa-

ny Act of 1935, Glass-Steagall problems, integration of the corporate disclosure system, the electronic linkage of NASDAQ and the stock exchanges to enhance the experiment in off-board trading of listed stocks, the advisability of extending the use of the shelf registration procedure, the jurisdictional problems between the CFTC and the SEC, and the unique problems raised by our extensive enforcement program. No enforcement matter has received more public attention than the Commission's decision last December in the *Citicorp* case.

Members of the press and others have raised two issues in regard to that matter. First, was the Commission correct in its decision not to institute enforcement action to compel disclosure concerning questionable practices in Citicorp's foreign exchange operations; and second, was it appropriate for me to participate in that decision?

The first issue was addressed in March when we put out a press release which set out the factors that led to our decision. That was an unusual step, and we did it in response to the substantial publicity we had received. I have nothing now to add to that statement. Since my commitments concerning recusal were made to this committee, however, and since I know of your interest in my decision to participate, I would like to share with you now the rationale for that decision.

In my 1981 statement to this committee, I made clear my intention to recuse myself from matters before the Commission involving a request for exemption from a Commission rule or the institution of enforcement proceedings in two situations: First, where my former law firm, Debevoise & Plimpton, represented any party; or second, where I had any connection with or gained significant knowledge of the matter while I was at Debevoise.

I also indicated that I would recuse myself where it appeared to me desirable to do so in order to avoid the possible appearance of impropriety, although I emphasized that, generally, in the absence of any actual conflict, I intended to participate in policy matters and general rulemaking.

Citicorp was not represented by Debevoise in connection with the actions that were the subject of these enforcement proceedings, and I had no prior personal knowledge concerning this matter. Thus, the issue I faced in making a decision was whether recusal was desirable to avoid the possible appearance of impropriety. That was an issue since the Debevoise firm serves as counsel to some of Citibank's trust business. In reaching my decision, which was essentially one of personal judgment, I evaluated the nature of that firm's relationship with Citibank, my personal contact with that client, and the desirability of my participation in this matter in the light of the important policy issues which were involved.

Debevoise does not act as counsel to Citicorp, the holding company. It does regularly, however, represent Citibank's trust department in regard to some of its legal problems. I have never been active in this area of the firm's practice.

In contrast, throughout the decade of the 1970's, I spent a considerable portion of my time—nearly 50 percent—representing another institutional investor in troubled real estate investments where my client's interests as junior lender or equity participant

were fundamentally at odds with those of Citibank as senior lender. My former firm's representation of the personal trust business at Citibank did not prevent me from serving that institutional client in opposition to Citibank's position, either under the professional canons of ethics or in terms of the client's confidence.

A more recent example occurred from January 1980 to July 1981, when I served as counsel to Chrysler in its—thus far—successful effort to avert bankruptcy. Citibank was the leader of those lenders to Chrysler most opposed to the bail out. I'm sure this committee knows that. Not surprisingly, negotiations with Citibank were among the most difficult encountered during the 18-month period.

In these circumstances, I saw nothing that would impel me to recuse myself from the Citicorp matter. I believed that my long experience in representing clients on matters where their interests were directly opposed to those of Citibank established sufficient distance from Citicorp to evidence my ability impartially to serve the public interest in this case. It goes without saying that I believe I did that.

The easiest approach—and this does raise a bigger issue, and a more general issue, a very important one I think for the Congress and others in Government service or considering Government service—the easiest approach to conflict-of-interest problems is to recuse one's self whenever a doubt arises, regardless of the nature or degree of the problem or the surrounding circumstances. That approach serves to minimize criticism, but sometimes at the expense of the Commission and my fellow Commissioners, who must assume my share of the decisionmaking burden.

That's the end of my statement.

The CHAIRMAN. Mr. Treadway, do you have an opening statement?

Mr. TREADWAY. No, Mr. Chairman, I do not.

The CHAIRMAN. Mr. Longstreth, it is my understanding that you're being nominated to fill the unexpired term of Phillip Loomis which will expire June 5, 1984. Were you consulted in the decision that your appointment would be for 2 years rather than the 5-year term?

Mr. LONGSTRETH. Was I consulted?

The CHAIRMAN. Yes.

Mr. LONGSTRETH. I requested it of the White House when I learned of Phil Loomis' decision to resign. I asked the White House to consider appointing me for a 2-year term rather than a 5-year term for personal reasons. I'm leading a dual life because my family is in New York and cannot come down here because my wife is a professional in New York and I have kids in high school. I didn't see how I could indicate a willingness to take a 5-year term with any candor.

The CHAIRMAN. So the request came from you?

Mr. LONGSTRETH. It came from me back in—I think it was January.

The CHAIRMAN. Were the commitments you made to this committee at your first confirmation to place your listed securities in a blind trust carried out?

Mr. LONGSTRETH. Yes, they were.

The CHAIRMAN. I understand that you've been granted by Chairman Shad a waiver from the applicability of the Federal conflict-of-interest statutes to the assets of two family trusts on certain conditions, and are those conditions being met?

Mr. LONGSTRETH. Yes, they are.

The CHAIRMAN. Other than your law firm's retirement plan which you describe in your statement to the committee, do you have any agreements under which you'll receive compensation during your term of service?

Mr. LONGSTRETH. No, there are none.

The CHAIRMAN. In essence, then, you will take the steps necessary to avoid the appearance of conflict of interest in this new term?

Mr. LONGSTRETH. Yes.

The CHAIRMAN. If you're confirmed, do you agree to appear before this committee and others when requested?

Mr. LONGSTRETH. I would be happy to.

The CHAIRMAN. Will you explain how you will handle potential conflicts of interest regarding clients of your former law firm?

Mr. LONGSTRETH. Well, the statement that I made in my opening statement is unchanged and I would expect to continue to adhere to that standard as—I might add—informed by the experiences that I've had in the past.

The CHAIRMAN. For the committee, could you describe the extent to which you have personally represented Citicorp or Citibank in any matter?

Mr. LONGSTRETH. I believe that the one case where I represented Citibank, which goes back to more than a decade, started about 1967, give or take a year. Northwestern Mutual Life Insurance Co. asked Debevoise to represent it and two other lenders in a loan to a subsidiary of Penn Central, a secured loan, of $50 million of which Northwestern was taking 50 percent and the other two lenders, Citibank as trustee for pensions trusts and the Phoenix Life Insurance Co., were taking the balance.

As is typical in these types of deals, the lead lender designated counsel, and so we were designated by Northwestern and I represented those three clients in putting the papers together and consummating that deal.

Then, I think it may have been around 1971, when Penn Central declared bankruptcy, I went down to Philadelphia to go into court and secure an order protecting an assignment of rents of the Madison Square Garden complex that we had a claim to, and I'm not a litigator so I was a little out of my area there, but we got the order and I worked on that for about another 9 months until we could get the litigation team into place. And from that time on I had nothing to do with that case except occasionally being consulted on the documents.

But that was not a situation where we were asked by Citibank to represent them. It was simply that we were asked by Northwestern, and Citibank enjoyed the benefits of our representation.

Other than that, I don't know of any cases where I was involved. It's possible that I did attend one or two meetings of a venture capital type company in maybe 1972 or 1973 where Citicorp was an investor, and I don't really remember this but somebody—a former

colleague of mine--sent me a post card after my letter to the Times indicating that he thought I had been involved in this matter. So I may have been just at a couple of meetings, but I really don't remember them.

The CHAIRMAN. Beyond your personal representation, could you describe in more detail the firm's representation of Citicorp and Citibank?

Mr. LONGSTRETH. Yes. The representation of Citibank involves principally helping them with the trust business that they have, settling estates, that sort of thing—personal trust business where Citibank is the trustee.

It also has involved helping Citibank in the investment of trust funds in different types of investments where they thought Debevoise would be useful. In the early 1960's, Debevoise did a substantial amount of real estate investment work for Citibank but that business sort of went away—went to another firm. I don't know when that started, but that work has tapered off a lot so that right now I don't think the firm does any real estate investment work.

The securities work for the trust side of the bank is consolidated with the securities work for the commercial side and is handled principally by Shearman and Sterling. I say principally. There may be some things that other firms do, but Debevoise doesn't do any of that work.

The CHAIRMAN. Did you at any time represent clients having interests adverse to Citicorp while your firm represented Citicorp or Citibank?

Mr. LONGSTRETH. Did I? Yes, and I described those cases. Nearly 50 percent of my work in the decade of the 1970's was devoted to helping an institutional investor get into and then get out of real estate investments. This investor was interested in taking a rather aggressive position so that it invariably put itself in a junior lending position or an equity position. In a surprising number of cases Citibank was the senior lender, and in a surprising number of cases, because of the recession and the terrible situation in real estate in the mid-1970's, these deals were in distress or trouble. They either went into bankruptcy or flirted with it, and we were daily engaged in negotiations that were often very difficult, trying to extract ourselves at the expense of the senior lender, with the senior lender trying to push us more and more into a no recovery position.

So that had been my experience in the decade of the 1970's and I have to say it powerfully informed my judgment on this case because I didn't feel any tugs of loyalty whatsoever to the object of our inquiry, which was Citicorp.

The CHAIRMAN. Did this representation by you ever require your firm to cease to represent Citicorp or Citibank in any matter?

Mr. LONGSTRETH. No.

The CHAIRMAN. Mr. Treadway, I understand from your statement filed with the committee that you will resign from all positions which might conflict with your responsibilities at the SEC, including your law firm and your position as trustee and limited partner with Bear Stearns & Co. Is that correct?

Mr. TREADWAY. That is correct, Mr. Chairman.

The CHAIRMAN. Additionally, you've agreed to place all the securities which you and your wife own at the time when you take the oath of office into a qualified, diversified blind trust, terminate your account with your securities brokerage. Is that correct?

Mr. TREADWAY. Those securities will be placed in a blind trust unless we decide to dispose of them and invest in a permissible government securities investment.

The CHAIRMAN. Can you explain how you plan to handle any potential conflict-of-interest involving clients of your law firm?

Mr. TREADWAY. Yes, sir. In any instance where my law firm appears representing a party in connection with a specific request for an exemption or in connection with a specific enforcement matter, I would recuse and disqualify myself.

In addition, if a matter came before the Commission where I had gained significant knowledge while I was at Dickstein, Shapiro & Morin, or I otherwise was significantly connected with the matter, I would intend to recuse myself.

Generally, if it were necessary, to recuse myself to avoid the appearance of a conflict of interest, I would also intend to do so.

The CHAIRMAN. I understand also from your statement if that during your term as Commissioner any event occurs which would cause the interest of your wife or children to invest in any of the trusts in which they are contingent beneficiaries, that you'll place any corpus distributed to them which are listed securities in a qualified blind trust.

Mr. TREADWAY. Yes, sir.

The CHAIRMAN. Do you agree to appear when requested before this and other congressional committees?

Mr. TREADWAY. I do.

The CHAIRMAN. Other than your law firm's retirement plan which you describe in your statement to the committee, do you have any agreements under which you will receive compensation after your confirmation?

Mr. TREADWAY. Yes, sir. There is one provision in our partnership agreement which provides under certain circumstances for me to share in contingent fees received by the firm arising out of cases which the firm is presently handling as of the date of my withdrawal. Those fees are essentially computed on a time basis in the sense that my interest in the fee would relate only to the time the firm was handling the case while I was at the firm rather than sharing in the the fees that accrued subsequent to my withdrawal.

The CHAIRMAN. Please explain the circumstances of your agreement with your law firm for participation in contingent fees realized after your confirmation.

Mr. TREADWAY. It's a provision that has been in our partnership agreement for some period of time, Mr. Chairman. I think the operative partnership agreement was executed as of January 1, 1981, which was well before any suggestion that I might be assuming a position in Government service and it is merely operative as a result of the partnership agreement. It applies not only to me but to any other partner in my law firm.

The CHAIRMAN. Is it possible under that arrangement that you could receive compensation from a case that could be affected by SEC action?

Mr. TREADWAY. I don't believe so, Senator. The cases that are involved are some approximately four or five cases. One is principally a product liability matter. One is a breach of contract and trademark case. One involves an allegation of corporate waste, and one is a personal injury case. None of those, as far as I can determine, have any involvement at all on the part of the Commission.

There is one additional case, the fifth case, which is an action against the Secretary of Education where the firm is cocounsel with the Trial Lawyers for Public Justice in the nature of a pro bono case and I am waiving any interest I might have in that particular case since it is against the U.S. Government.

The CHAIRMAN. Thank you, Mr. Treadway.

Senator Proxmire.

Senator PROXMIRE. Well, gentlemen, I want to congratulate President Reagan on two very fine appointments. I think you're both extraordinarily well qualified.

Mr. Treadway, I notice that you're a summa cum laude graduate of law school, with the highest grade average of your 3 years of law school in your class, and also, even more important, is during the past 15 years you've been engaged in a diversified securities law and corporate finance practice so that you obviously have exactly the right kind of background for this job, and I congratulate you and the President on it.

Mr. Longstreth, you have an interesting background, too. You went to The Hill School.

Mr. LONGSTRETH. I did.

Senator PROXMIRE. As did I. You graduated a couple years after I did, but you have obviously a superlative educational background also. You're a member of the New York Road Runners Club and the Washington Road Runners Club. You look in super shape. You don't get in shape by just hanging around an old gym or a second or third gym; you get out and run. That's great.

I have some questions. They may be somewhat repetitive, but I think this particular issue is very important and I'm sure you recognize it too.

You started off by explaining your relationship with the Citicorp and in response to your representations to this committee when you appeared here a little over a year ago. I want to follow up on that to some extent. The chairman also asked you about that. But let me put these questions formally because I think they are very important. The issue has been raised, as you know, and I would like to get it on the record as clearly as I can.

On December 22, 1981, you took part in an SEC decision not to initiate an enforcement proceeding against Citicorp. The vote was 3 to 1, so your vote was not decisive in determining the outcome. However, it was widely reported in the press that Citicorp was a major client of your former law firm of Debevoise & Plimpton. This connection has raised several questions about your participation in that case that I believe are important to air during the hearing.

First, let me state clearly that your participation does not appear to violate any Federal law because Citicorp has not retained you previously on this matter before the SEC. Your participation, however, does raise questions with respect to your commitments to this

committee during your nomination hearing last year about our conflict-of-interest law in general.

In your testimony before the committee last year you said the following:

> I would expect to recuse myself from any enforcement proceedings in which my former firm was involved in any way in representing a party or in any matter where there was an appearance of conflict, if that warranted recusal.

Now I think the question of an appearance—an appearance of a conflict is a matter of concern. While I appreciate your desire to participate in as many cases as possible, I ask you, might the public reasonably have perceived an appearance of a conflict in this case in light of the fact that Citicorp was a major client of your former law firm?

Mr. LONGSTRETH. I think that the public might have perceived an appearance problem in this case knowing what they learned from the article in the Times.

I think if I had had a chance to explain, as I've had a chance to explain to you gentlemen, the basis on which I reached the judgment that the appearance problem was not so serious that it had to compel me to recuse myself, then I think the appearance problem would have been understood and disposed of.

The problem is that in an enforcement action we can't really talk about that kind of thing, before or after the decision, because to go public with a statement about Citicorp, especially where we decide not to take action, is to impugn them by telling the public that we were involved in investigating them, which we normally don't do. The only reason this investigation became known, of course, is because it was all leaked to the press. We try not to publicize these things.

So there is a problem. There is a problem in communicating to the public the basis on which one reaches a decision of this kind.

Senator PROXMIRE. Well, doesn't it seem that it would be better, under all the circumstances and with hindsight now, to have recused yourself under these circumstances? After all, one of the reasons is that it's not unusual for Presidential appointees to return to their old law firms and the public knows that. That happens often. And wouldn't it have been reasonable for the public to assume that you were voting to protect your law firm's economic interest?

Mr. LONGSTRETH. No, I don't believe so.

Senator PROXMIRE. Why not?

Mr. LONGSTRETH. Well, the economic interest that the firm has in Citibank's trust business is well under 5 percent of the billings, and it seems that if the firm were concerned enough about that kind of business, they certainly wouldn't allow any of their lawyers to take on another client's business where they were going to be head-to-head with Citibank in difficult negotiations.

I guess my feeling about it is that the professional canons of ethics are a very important set of guides which go quite far in establishing what is and what is not appropriate behavior, and the canons don't stand in the way of the kind of representation that went on.

Senator PROXMIRE. Well, let me ask you this. Would you act differently today should Citicorp or any other major client of your former firm be involved in an enforcement matter before the SEC?

Mr. LONGSTRETH. I would have to decide the case on the facts at the time. I would have to say I would be informed by the experience that I've had, but I'm not sure I would come out differently.

Senator PROXMIRE. Well, let me ask you this then, a broader question.

Senator D'AMATO. Do you like martyrdom?

Mr. LONGSTRETH. Pardon me?

Senator D'AMATO. Do you enjoy martyrdom?

Mr. LONGSTRETH. No, I don't enjoy martyrdom.

Senator D'AMATO. I beg my distinguished colleague's pardon.

Mr. LONGSTRETH. No, but I think that it's very important for the—I mean, how many important cases do we look at in a year? I think it's very important for us to participate wherever we can.

Senator PROXMIRE. Of course it is.

Mr. LONGSTRETH. And we're talking not about an actual conflict. We're talking about an appearance, and it's basically a question of personal judgment. You may reach a different judgment than I reach. We all can reach different personal judgments on the question of appearance. But I think it would be unfortunate for ——

Senator D'AMATO. Would the Senator yield because I think it's right along the same point that Senator Proxmire made. In terms of when he says, "Would you do this again?" Given the fact that this is the way the media reports and this is the situation and the position that you are in—and let me say this for the record, I don't think there's a more honorable person who has served at the Commission and I am absolutely convinced in terms of your intellectual capabilities, your integrity, and that you have given this very careful, careful analysis. But that's not the point.

You're in a situation today which is show business. The media is show biz. You're going to be part of that, and they're not going to carefully analyze and dissect your carefully constructed logic as to why you should or shouldn't participate in a decision. And I would just suggest—and I say this as a friend and an admirer, you're a conscientious and dedicated Commissioner—if it comes up again, well, you'd better run. If you don't, then you like martyrdom. And I thank my colleague for his indulgence.

Mr. LONGSTRETH. I didn't come to Washington to be in show biz, and I don't think I am.

Senator D'AMATO. The media—it's show biz today. Television competes. Journalists have to compete even more so. That's the nature of the system, and you're on center stage. You are on center stage. So your logic is not confined to the halls of academia.

Mr. LONGSTRETH. Yes, but public servants are expected to take a little heat from the press. It happens to everyone, no matter who.

Senator D'AMATO. Then be prepared. Be prepared. The next time, be prepared. You're forewarned. I'd say I'd run like heck. I wouldn't do it, but you go ahead.

Mr. LONGSTRETH. Well, I'm just saying I think you've got to decide those things on the merits of each case, and it's a personal judgment.

Senator PROXMIRE. Let me ask to see what we can do about this without departing from your own personal problem. It is difficult to define what constitutes an appearance of conflict of interest. Have you given any thought as to how Congress might address the issue?

For example, do you think we could avoid this kind of problem by prohibiting Presidential appointees from returning to their old law firm? What would you think of that? Do you think such a rule would discourage a lot of good, qualified people from serving in government if we did that?

Mr. LONGSTRETH. I think it would, yes. There are so many roadblocks to serving in government today ——

Senator PROXMIRE. Take your case. You answered the chairman's question by saying that you wanted a 2-year term so you could return to New York and continue to practice law.

Mr. LONGSTRETH. No, I didn't say that.

Senator PROXMIRE. Well, I beg your pardon, you said to return to New York where your wife works, right?

Mr. LONGSTRETH. Or get back together with my family. What I said was that I couldn't see taking a 5-year commitment and telling you that I intended to serve it out.

Senator PROXMIRE. Well, the implication of that, you see—my implication probably was wrong—was that you intended to return to your law firm.

Mr. LONGSTRETH. Well, that is not a fair assumption.

Senator PROXMIRE. All right. Do you intend to return to your law firm?

Mr. LONGSTRETH. I have an intention to explore a variety of opportunities if I can find some.

Senator PROXMIRE. You don't rule out returning to your law firm?

Mr. LONGSTRETH. I wouldn't rule it out.

Senator PROXMIRE. It's a possibility?

Mr. LONGSTRETH. It is a possibility.

Senator PROXMIRE. So the public might be correct if they assume that this is a possibility and that, like so many other Presidential appointees, you might go back to your old law firm and whatever action you take now in the interest of that firm or that might be construed as helping that firm in any way, shape or form might serve your own interest.

Mr. LONGSTRETH. Well, if you thought that, you shouldn't confirm me. In other words, the real test here is ——

Senator PROXMIRE. Well, how can I tell? As I say, I think you're ——

Mr. LONGSTRETH. That's what the confirmation process is for. How do you know you're going to be able to live with the same woman for a long time? You do the best you can on the facts available.

Senator D'AMATO. How did that get in there? [Laughter.]

Senator PROXMIRE. You do the best you can all right. Well, at any rate, you say then it's a guess really.

Mr. LONGSTRETH. No, it's not a guess. It's an informed judgment which we make all the time on the best available evidence, and I

think the Senate in the confirmation process is supposed to be doing that.

Senator PROXMIRE. Would you agree not to go back? Would you make that affirmative statement?

Mr. LONGSTRETH. Pardon me?

Senator PROXMIRE. Will you this morning agree not to go back to your law firm? Will you make that affirmative statement?

Mr. LONGSTRETH. No, I won't, and I think that would be a very unreasonable request for you to make of me.

Senator PROXMIRE. Well, I'm not asking you to do it. I'm just asking whether you would agree to it. Well, I have other questions. Let me get to those later. My time is up.

The Chairman. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

I've made my observation and, Bevis, I'd just say as a friend that you should be a little more careful and don't choose that path of saying that because you intellectually feel that you have disciplined yourself enough, so that there is no problem. I do think that Senator Proxmire makes a point. The media has its legitimate role in asking and making inquiry. The public is distrustful, and I think that appearance is more at issue than anything else.

There is not the slightest doubt in my mind in terms of your personal integrity that you would recuse yourself from any matter in which you thought that it would be appropriate to do so, and might be influenced one way or the other as a result of your past associations. I have no doubt about that. But that's not going to come through to the public and the media which have an absolute responsibility to explore these things. They're not going to explore them to the degree or depth that you've carefully laid out here, in terms of your analysis with regard to this one case.

I just leave you with something less than an admonition, maybe I'm telling you to rethink what you've indicated. That's why I said you like martyrdom. If you like it, maybe that's why you decided to take only a 2-year term. Maybe you can't take 5 years martyrdom and 2 years is enough.

Mr. LONGSTRETH. Well, I don't feel like a martyr, but the key to this is the integrity of the individual. There are so many opportunities available to someone you choose to serve in this position, which is a position that requires some expertise with the details—that's the point of a regulatory agency—details that have enormous monetary impact on the people we regulate. If you choose someone with a professional practice in the field, as you have done with the two of us, then those people are going to be the subject of pressures from the people they have worked with in the private sector, and there are opportunities for all kinds of real conflicts if you're talking about someone willing, in effect, to sell his position. And so it boils down to integrity, not these kinds of rules that you won't go back to your firm. For you could go back to a different firm that practices the same kind of law. It seems to me the solution depends more on the process by which you establish a person's professional record and reputation in his community and then, once you've established that, he should be able to take the heat a little bit if there is an appearance problem and he comes out on

the side of it that allows for some criticism. So he gets criticized. But, if you think you did the right thing, you go ahead.

Senator D'AMATO. I can't tell you that I'm not impressed by your sincerity and the strength of your convictions in saying that. Sometimes I wish that there were more of us who could exhibit that commitment and take the heat and go ahead. It's a noble manner in which to pursue public service.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Treadway, if Senator Proxmire had asked you the question that he directed to your colleague about returning to your law firm, what would you have said in response?

Mr. TREADWAY. Well, as I indicated in the statement, Senator, I have no agreement or plans to do anything upon expiration of my term. However, I certainly would not rule out the likelihood that that would be a firm I would consider going back to. It's a firm where I've spent virtually my entire professional career and I have many very close professional and personal friends there.

Senator SARBANES. I want to say to both of you I think that's the right answer. I don't think you should preclude returning to your previous law firm. You could actually make a decision on behalf of some other law firm that you never had a connection and wasn't likely to be scrutinized, and then dance off to that law firm after leaving the Commission—if you're that kind of person. We have to make some judgment about the nature of your own integrity and character if we're going to draw you from this part of the private sector, and obviously, for a position that requires the kind of expertise that a Commissioner needs, there are not many other places we can go looking for people who can understand and carry out the responsibility of the job. I mean, I certainly don't think you ought to be called upon, to make such a pledge if the Congress eventually wants to impose some limitation of that sort, it would seem to me it would cost us the potential services of an enormous number of very able and qualified people.

I'm not sure you should go back to your State. You might make decisions in some Government position that favored the State you came from. Perhaps we should say that you can't return to your particular State so you don't make decisions in here that benefit it while you're serving in public life.

I do think this question of judgment on appearances is an important one. I don't want to go as far as some members of the committee seem to have gone this morning in saying that you should get out of any situation where there's any possible problem. There is the countervailing consideration—you're there to participate in making decisions. There aren't that many of you, as a matter of fact. And if you were recusing yourself all the time you would not be participating in the work of the Commission. Recognizing your integrity, I would simply caution that you not get get so carried away with it that you become altogether insensitive to some of these problems of appearances. There may be instances in which you know inside yourself there's no problem but at the same time you're just sensitive enough to know how it looks outside. The need then to become involved in a very extended and perhaps difficult

explanation may mean that in some instances it may be better to recuse yourself.

I think it does depend on the facts of the situation, but I do think you ought to be sensitive to that consideration.

I missed some of the questioning earlier, and I don't want to repeat questions, but maybe I'll put it to you this way. I'd like to ask each of you what you see as the three most important items on the agenda for the Commission in the course of the next couple of years, assuming, as I do assume, that you're both going to be confirmed, either to serve or to continue to serve.

Mr. LONGSTRETH. Well, in terms of the level of——

Senator PROXMIRE. Well, why don't we ask the new boy on the block to go first so he doesn't get the coaching from the old boy on the block? The question is not asked with anything in mind. It's an open-ended question. I'm just kind of interested in it.

Mr. TREADWAY. Well, it's sort of hard to identify three discreet areas, but let me start out with one very broad one which I think could be broken down into 3 or perhaps 15 categories, and that is the consolidation of the financial services industry and the lowering lines of barriers that have traditionally existed between various types of industries.

To me, I think that is the single most important issue facing the Commission, facing the financial services industry and facing the Congress, because the resolution of that issue will determine who are the role players in the capital formation process. Are we going to continue to have a capital formation process where it is spread among many traditional investment banking firms, including large and small, New York based and regional based, and even smaller firms; or will we find ourselves with a securities or financial services market where Citibank, for example, is going to be out selling securities in some shape, form, and fashion to its depositors or to its retail distribution network?

I think the resolution of that issue or those issues—and there are many, many subissues within that—is going to affect virtually everything else that the SEC does. I don't think you can really talk about what sort of an enforcement approach you ought to have, for example, until you tell me or someone tells me what sort of a capital formation process you're going to have.

Senator SARBANES. Who is it that does that telling? I recognize the importance of that issue. Obviously it's being booted about and in some ways being decided almost without being decided, but who is the prime decisionmaker on that question?

Mr. TREADWAY. Well, the prime decisionmaker, in my opinion, Senator, are market forces. I think that the market forces in the financial services area are so great, that there's been such an acceleration of developments, that certainly the Commission in a sense is being dragged along with it and having to be in somewhat of a position of responding, of trying to keep pace with what the market forces are dictating.

I won't suggest that the Congress is also being dragged along, but the forces—the introduction of so many new types of instruments, new trading techniques, the internationalization of markets, the possibility of 24-hour trading—all of these things are forcing all the

policymakers to react. I think the market may be one or two steps ahead of those who are attempting to make policy.

Senator SARBANES. Who makes the policy? Assuming we came to grips with it, since many of the divisions or the separations you talked about are congressionally established?

Mr. TREADWAY. Ultimately, the policies are going to be set at the top level by the Congress.

Senator SARBANES. To what extent do you think the agencies ought to make the policy separate and apart from the Congress?

Mr. TREADWAY. Well, I think the agencies ought to not so much set policy in the sense of crossing traditional lines; for example, aggressively breaking down barriers between banks and brokerage firms, but, rather, when those problems arise making sure that there is a thorough and open dialog between, for example, the banks and the banking authorities and the Securities and Exchange Commission and perhaps the Treasury Department if they're involved, and making sure that the Congress is aware of that dialog and aware of the problems that those agencies collectively see.

In other words, I don't think the agencies ought to be out on the forefront by themselves saying we are going to unilaterally do away with, for example, Glass-Steagall.

Senator SARBANES. I don't see how the agency could even contemplate doing that since that represents a legislative judgment and if it's to be altered it could only be altered as a legislative judgment.

Mr. TREADWAY. I agree with that, but there are so many areas of rulemaking and exemptive authority scattered throughout the agencies that I think in some instances the agencies have perhaps got into the area of changing what at least people thought the rules were.

Senator SARBANES. Well, recognizing this problem, do you have a fixed view on where it all ought to come out? Do you think that's something that needs to be explored carefully?

Mr. TREADWAY. No, Senator, I don't have a crystal ball to say where it all ought to come out. I think, though, in terms of the questions that ought to be asked by the policymakers, whoever they may be, in order to reach that decision, would be what sort—and I'm speaking now from the securities standpoint—but what sort of capital formation process do we want? Will the breaking down of barriers, for example, between banks and securities firms improve depth and liquidity of the market? Will it bring more individual investors into the markets because the banks have this great retail network that they can draw upon? Or, on the other hand, would it have exactly the opposite result? Will it mean that the banks will become the classic institutional investor and that the equity market will become more institutionalized the way the debt market has become in the past 10 years or so?

I think that's the analysis that I would start with in order to try to come to some conclusions about what the financial markets ought to look like.

Senator SARBANES. The Glass-Steagall distinction has some basis in conflict of interest considerations, and also concentration of eco-

nomic power considerations. How important do you regard those considerations to be?

Mr. TREADWAY. Well, if in the conflict of interest you're talking about the problem of the banks taking the underwritings and selling them off to their depositors, it's sort of hard for me to believe that that is as much of a potential conflict or abuse now as it was in 1929. I think there are other regulatory restraints and mechanisms in place that prevent or at least control the abuses that existed in the 1920's.

On the question of economic power or the concentration of economic power, I personally do not regard that in and of itself as an inherent evil as long as those with concentrated economic power continue to provide the service to the public at large.

Senator SARBANES. How would you assure that, by increased Government supervision and regulation?

Mr. TREADWAY. Senator, I don't really have an answer to that.

Senator SARBANES. My time is up.

The CHAIRMAN. Mr. Treadway, the Commission has indicated a strong interest in prosecuting insider trader cases. Do you believe this emphasis appropriate and do you think it's producing desirable results?

Mr. TREADWAY. I do think it's most appropriate, Senator. My personal view is that one of the most reprehensible blatant violations of the securities laws occurs with insider trading and it occurs on an enormous scale and in this era, particularly with the potential use of leverage of various types of option instruments, I think the potential for abuse and profit has been enormously increased and those who do this are almost in a no-lose proposition. If they get away with it, they keep the profits. If they don't, they give the profits back and they're enjoined, and if they're not a professional broker or an attorney or an accountant or someone who's subject to other sanctions, they go their merry way. So I support what the Commission is doing. I support the idea of some form of punitive damages, whether the number is 200 percent or 300 percent, and I don't really have a firm feeling on that, but I do think that's an area that should be pursued aggressively.

The CHAIRMAN. Mr. Longstreth, this committee has approved legislation to establish clear lines between SEC's jurisdiction and CFTC. What's your opinion of that legislation? It was agreed to, as you know, by both agencies.

Mr. LONGSTRETH. Well, I supported the legislation. I think that it's absolutely critical right now that the legislation be passed because of the problems we have with the seventh circuit decision, which has cast a cloud over our authority to regulate options, including equity options.

In response to the question that Senator Sarbanes put, I was going to mention that I think the CFTC-SEC jurisdictional difficulties, while being solved for now by this legislation, are going to return and should return to the Congress down the road to deal with in a more definitive way. There are too many agencies. They tend to take on a life of their own, and they tend to compete with each other. That tends to be a competition in laxity, as I think one of the Senators may have said some time ago—Senator Proxmire—and it causes a problem.

In the case of the CFTC-SEC areas of jurisdiction, they are rather arbitrarily defined in that legislation because the marketplace in this area as well as the ones that Jim Treadway was referring to are sweeping beyond these definitions. You have futures and options and options on futures coming along, and these same people—the broker-dealers we regulate—are expected by their clients to be able to offer all of these different products. And yet to have different regulators dealing with different segments of these multiple products creates serious difficulties.

The CHAIRMAN. Do you believe that SEC regulations ought to be sunsetted so they can be reviewed as to their utility and worth?

Mr. LONGSTRETH. I think that—well, I haven't thought too much about that question. I think I'd say my quick judgment would be against specifically sunsetting them. What ought to go on is the agencies should be reexamining in a methodical, systematic way the effectiveness of the regulations they have written under the law.

The CHAIRMAN. I agree with you that they should, but the whole theory of sunset is that it forces that review so that if they should continue before the sunset day arrives they have made that review.

Mr. LONGSTRETH. Well, I don't have a problem with that, although I would hope that one could allow sufficient time to pass so that you could have a sense of whether the regulation was indeed effective or not.

The CHAIRMAN. Mr. Treadway, small businesses tend to be at quite a competitive disadvantage with large firms in complying with complex regulation. Recently the Commission has been attempting to reduce regulations on small businesses. Have you observed in your practice that it's been effective? Has the SEC been accomplishing anything yet in that area?

Mr. TREADWAY. Senator, I would have to say yes, but most of the companies that I've worked with have really not been I would say small enough to effectively take advantage of, for example, the old rule 240 and the increase from $100,000 to $500,000 in the amount of securities that they can offer without doing anything as regards the SEC.

My general impression is that, yes, it's helping. I think SEC in getting the $5 million and below filings into the regional offices has cut expenses and has shortened the processing time on such registration statements. But I must say that my personal experience has been with clients generally not as small, so I don't have a lot of firsthand experience to base that on.

The CHAIRMAN. Mr. Longstreth, are you satisfied the Commission is doing enough to streamline the disclosure process and really in effect make disclosure more useful to investors?

Mr. LONGSTRETH. I think we've made great strides this year. The integration package came to fruition this year, which involved focusing principally on a company—registering the company and requiring disclosure on an ongoing basis rather than just when it issues securities to the public. Those rules were streamlined and made more coherent and intelligent, and I think they have been well received by the community they affect. So I think great progress has been made, particularly in the last year.

I think more can be done and we are continuing to work on it. We really are trying to get a better sense than we've had in the past of what investors, particularly sophisticated investors, want to know. They seem to be the least likely to comment on rules that we propose. So it's hard to get data. But I know Chairman Shad and all of us are interested in trying to get that data, and we're reaching out to them to make special requests when something comes up, because those are the people for whom our disclosure is designed. Segment accounting, for example, which gives the Japanese issuers fits, is used by many sophisticated investors and is critically important, but there may be other types of disclosure that we have, such as inflation accounting, that may not be very important at all. So we're trying to get a response.

The CHAIRMAN. Mr. Treadway, one final question for you. I guess I'm puzzled more all the time, the last 2 or 3 years particularly, as I see nominees come before this committee and I wonder why you want to be on the SEC and specifically you must have some goals and some concerns that you want to accomplish because it certainly is not for the financial gain. Any attorney, any incompetent attorney, can make as much out in the private sector as you're going to be paid as an SEC Commissioner. Both of you make great financial sacrifice, all of the disclosure, the blind trusts, and all to come here. So what are your goals? What do you want do on the SEC? What are the concerns which prompt you to make that sacrifice to your family and your income to come and serve in Government?

Mr. TREADWAY. Well, Senator, that's probably the hardest question that I've been asked.

The CHAIRMAN. I've been here 8 years and I haven't answered it for myself yet.

Mr. TREADWAY. I guess perhaps a slightly facetious way of answering—and I don't mean to be offensive with it—when I started practicing law, I always said to myself that I was going to practice for 20 years and then I was going to take off and teach 2 or 3 years. Perhaps this is a nice early substitute for doing that and getting out of private practice for a while.

But a bit more seriously, the things that are going on in the industry on the structural side which I alluded to I think in response to Senator Sarbanes' questions, are quite frankly of tremendous fascination to me. I've been fortunate enough to have the opportunity to work not only from the corporate issuer side but from the side of regulated depository institutions as well as the stock exchanges and a foreign bank. And the things that are occurring from a structural standpoint are significant. They are fascinating to me personally and to the extent that I can be there and perhaps play a firsthand part in it, I simply would like to do it. I don't have much of a better answer than that.

The CHAIRMAN. Senator Proxmire.

Senator PROXMIRE. Mr. Longstreth, a staff memorandum in the Citicorp matter contained a recommendation that refers to parking transactions which as I understand it are currency transactions to avoid or reduce taxes.

Now here's what they said, and I quote:

In 1973 until at least 1978, Citibank engaged in parking transactions always at artificial, that is predetermined rates, and often at rates that were completely outside the range of actual transactions for such currencies for that day. After 1975, however, less transactions were outside the range of transactions during the day and more were recorded within the range of actual transaction of the day. As the books and records did not reflect the true circumstances of the trade—that is, they were nonarm's length trades—they were false.

Now Citicorp is, of course, subject to the jurisdiction of the SEC and all companies subject to the jurisdiction of the SEC according to law, and I quote, "make and keep books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer."

Now since the parking transactions necessitated thousands of false documents by Citicorp, why didn't the SEC in its deliberations in which you took part, discuss bringing a records case against Citicorp?

Mr. LONGSTRETH. I don't know what memorandum you're reading from, but there was no recommendation that was made by the ——

Senator PROXMIRE. It was the enforcement staff recommendation. I have the action memorandum here. It contains facts. It's dated December 9, 1981. It's no recommendation but the facts that I've indicated in my question are reflected in the memorandum.

Mr. LONGSTRETH. Well, we did not debate at all the question of false financial statements.

Senator PROXMIRE. Well, shouldn't you have? Wasn't that your responsibility? Why didn't you?

Mr. LONGSTRETH. Because I don't think it was raised that there were false financial statements.

Senator PROXMIRE. Well, isn't that your obligation to raise that as a Commissioner?

Mr. LONGSTRETH. Well, it would be if we felt that there was a basis for proceeding.

Senator PROXMIRE. Thousands of false documents. You didn't think that was a basis to raise a question?

Mr. LONGSTRETH. You're making an assumption that there were thousands of false documents.

Senator PROXMIRE. All I'm doing is reading.

Mr. LONGSTRETH. I don't know what piece of paper you have in your hand.

Senator PROXMIRE. Well, it's the action memorandum. I'd be happy to send it down to you. You can look at it, but it's an action memorandum of the SEC Enforcement Division.

Mr. LONGSTRETH. Alleging that there were thousands of false financial statements? I don't think that the—as I understood what you were saying or reading, these statements were false because there was not an indication that these numbers were not at arm's length.

Senator PROXMIRE. Well, they were outside the—let me just read it. It says:

To disguise such parkings from local authorities, initiating branches used several techniques. They (1) recorded the transactions in each branch's books as arm's length contracts and so presented them to local authorities; (2) they used rates which appeared legitimate as they were somewhere within the range of actual transactions during that day even though they were artificially predetermined rates

picked after the fact; (3) often used intermediary branches between themselves and Nassau; (4) used several small transactions rather than one large one; (5) used misleading telexes with code words referring to parking transactions; (6) maintained confidential files of its parking activities.

and so forth.

Then it says, "From 1973 until at least 1978"—and I'm quoting directly here from their report, they say, "Citibank engaged in parking transactions always at artificially predetermined rates and often at rates which were completely outside the range of actual transactions for such currencies of that day." I've already read into my question previously the rest of that.

Mr. LONGSTRETH. If you're talking about a records case under the Foreign Corrupt Practices Act, I don't think the act came into effect until the beginning of 1978.

Senator PROXMIRE. Well, it came into effect in December of 1977 and the false documents continued until late in 1978.

Mr. LONGSTRETH. Well, this was simply not discussed, as you know, because you have the transcript of the meeting. We didn't discuss that possibility. I think there's a good reason for it.

Senator PROXMIRE. Well, isn't it a question of the obligation of the Commission to raise this kind of an issue when you have this kind of report?

Mr. LONGSTRETH. We ought to raise any issue we see. That's right. But I think that in this case that issue could not have been pursued. We were told, as you know, that the division heads—three of our division heads recommended against bringing this enforcement action. The director of division of enforcement said that we couldn't make a case. A complete record had been published and filed in the 8-K of Citicorp.

Senator PROXMIRE. But there's no record that you ever discussed the false transactions.

Mr. LONGSTRETH. The possibility of the Foreign Corrupt Practices Act?

Senator PROXMIRE. Yes, sir.

Mr. LONGSTRETH. You're right. We didn't discuss it at the table.

Senator PROXMIRE. Let me ask you this. The Board of Directors' audit committee——

Mr. LONGSTRETH. The reason for that is that I don't think the allegations that you're making applied to facts that took place after that act came into effect. Citicorp did change the system that it was using around that time. I don't have the precise date in my head.

Senator PROXMIRE. Will you provide that for the record because this document says until late 1978?

Mr. LONGSTRETH. I will.

Senator PROXMIRE. Now the Board of Directors audit committee was unaware of the parking transactions and false documentation. Apparently there was doubt expressed by the head of SEC enforcement that Citicorp's chairman and top management knew of the practice. According to law, each corporation under the jurisdiction of the SEC must establish a system of internal controls sufficient to provide assurance that the transactions are executed in accordance with management's authorization. The law requires that. Here you had thousands of false documents and apparently no internal con-

trol by top management communicated to the audit committee of outside directors of what was going on. It would appear that the SEC hadn't done its job as far as enforcement as far as that statute was concerned.

Why didn't you, as a Commissioner, feel it was important to go into that matter?

Mr. LONGSTRETH. As I say, I think the law wasn't in effect during most of this investigation. What we were looking at was the age of the case, the fact that Shearman and Sterling had done this large report and made a public filing of it in 1978 and then the Comptroller of the Currency after a complete study of the issue found no problems in 1980. So that when we got the case there seemed to be no solid hook on which to proceed with an enforcement action against Citicorp. That was our judgment at that time. I think that was a correct judgment.

Senator PROXMIRE. Let me ask you one more question. At a 1975 conference of all Citibank European treasury heads to discuss parking, it was discussed in part—and I quote:

> No problem yet with local authorities but there's always this risk. This risk is increased because all bank regulators worldwide have been alerted to ways of hiding exchange dealings by Franklin National, Syndona, and other recently well publicized affairs. The bank's own staff knows or will know, despite management's efforts to restrict information to as few people as possible. Treasury heads think the risk of detection and sanctions is reasonable as compared to the risk of earning loss which would follow if the practice is stopped.

Now from this statement of officials of Citicorp it appears that the integrity of management should have been an issue before the SEC and yet a review of the SEC transcript in the decision of whether to bring a case seems to focus on the narrow issue of materiality. The parking transactions would appear to be material because they amounted to $46 million and Citicorp's total foreign exchange operations is one of the largest in the world and the false documents would appear to cast a doubt on the entire operation.

In any event, wouldn't you agree that there is an issue of integrity of management, that that issue of itself is material to investors?

Mr. LONGSTRETH. The problem with the integrity issue is that we are on very weak statutory ground in trying to enforce disclosure of something that is not quantitatively material but which is qualitatively material in the sense of the integrity of management.

Senator PROXMIRE. $46 million isn't quantitatively material?

Mr. LONGSTRETH. Well, not in terms of the size—I think it's less than one-half of 1 percent of their net earnings. We could get into the case which involved Lockheed where there were over $200 million of bribes and highly questionable foreign payments. We went into court in that case to try to support the plaintiff and the case was thrown out at the summary judgment level, the court holding—and this was appealed up to the Supreme Court and cert. was denied—the ninth circuit I believe it was held that unless there is self-dealing as opposed to simply mismanagement and clumsiness or corporate waste, unless there's self-dealing, it simply isn't a matter of integrity that ought or need to be disclosed.

Now we could have tried to fight uphill, but the SEC had taken an aggressive position in that case and had lost. There have been a couple of cases since then and the courts seem to be picking out a

difference between self-dealing and mismanagement, even gross mismanagement as you saw in Lockheed where it's in the interest of the business. This is a very tricky area because you're asking people to disclose their bad business judgments or worse, and I think that if it's to be addressed it ought to be addressed by rulemaking, because the courts do uphold the notion that if we have a rule and it isn't answered accurately, then the issuer is held accountable.

But it's hard. I sat down and tried to write a rule with the help of my legal assistants.

Senator PROXMIRE. Let me just ask you one final question. My time is just up, but let me ask you this.

In an article in the New York Times of March of this year—you may well have read it because it affected you—and I quote, it reads:

> Mr. Longstreth, according to sources familiar with the Commission's deliberations, argued that Citicorp had acted properly by measuring the risk of getting caught against the potential profits to be gained by the questionable currency transaction.

Mr. LONGSTRETH. No, I didn't say that.

Senator PROXMIRE. You deny having said that?

Mr. LONGSTRETH. Yes. At least I deny that that's a direct quote from the transcript. I don't think it is. I didn't say they acted properly. What I said was that it would be OK, it seems to me, if they were making, with the advice of counsel, a judgment as to how close to the edge of the law they wanted to go provided they were in good faith trying to comply with the law. This occurs repeatedly in tax areas. Where the actual law and its impact on what you're doing is uncertain, you make a judgment depending upon how you feel about it and how cautious you want to be, and I think that's within the area of legitimate business judgment.

Now if you knowingly say, "I'm going to violate this law," as J. P. Stevens & Co. did with the labor laws, then that's not within the business judgment rule. But there has to be room for judgment—people make different judgments as to how close they want to sail to the wind, in effect. And I don't think that that necessarily means that there's a lack of integrity.

Senator PROXMIRE. There are false documents. They're keeping two sets of books here.

Mr. LONGSTRETH. Pardon me?

Senator PROXMIRE. They were keeping two sets of books. There were false documents, thousands of false documents, and you apparently categorically deny that you said that Citicorp had acted properly by measuring the risk of getting caught against the potential profits to be gained by the questionable currency contracts.

Mr. LONGSTRETH. I don't believe I said that, absolutely not. I did not say that.

Senator PROXMIRE. All right. Thank you.

The CHAIRMAN. Senator Sarbanes.

Mr. LONGSTRETH. May I ask what article that came from?

Senator PROXMIRE. Yes. It came from the a New York Times article, section 4, page 1, an article by Jeff Gerth, dated March 1, 1982. We'll be happy to give you a copy of this.

Mr. LONGSTRETH. Would you like me to give you what I said?

Senator PROXMIRE. For the record, would you do that? Would you read the article and give us for the record your version?

Mr. LONGSTRETH. Yes, I will.

Senator PROXMIRE. Very good. Thank you.

[The following communication was received for the record:]

SECURITIES AND EXCHANGE COMMISSION,
*Washington, D.C., August 18, 1982.*

Hon. WILLIAM PROXMIRE,
*Senate Committee on Banking, Housing and Urban Affairs,*
*Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR PROXMIRE: This is in response to your request that I supplement the record of my confirmation hearings held by the Senate Committee on Banking, Housing and Urban Affairs on August 13, 1982.

You asked whether the Commission considered charging Citicorp with violations of the Foreign Corrupt Practices Act—specifically Section 13(b)(2)(A) of the Securities Exchange Act of 1934—and if not, why it did not do so. You quoted from a portion of the December 9, 1981, staff memorandum to the Commission ("the Memorandum"), in which the staff of the Division of Enforcement characterized Citicorp's foreign exchange transactions as resulting in "thousands of false documents".

The staff did not recommend charging a violation of Section 13(b)(2)(A) because of the difficulties of proof. You also asked that I supply the date that Citicorp changed its practices in booking foreign exchange transactions. The staff of the Division of Enforcement that conducted the investigation has advised me that in March, 1977, Citibank traders were instructed to book transactions at market. The exact date when this change was implemented is not contained in the Memorandum; however, the staff believes the change was effected by late 1977.

You also asked me to confirm that the following statement attributed to me in the New York Times article of March 1, 1982 was not an accurate representation of my views:

"Mr. Longstreth, according to sources familiar with the Commission's deliberations, argued that Citicorp had acted properly by measuring the risk of getting caught against the potential profits to be gained by the questionable currency transactions."

I have now reviewed the transcript of the Commission meeting. It makes clear that the risk of which I was speaking was not the risk of getting caught but rather the risk that the conduct in which Citicorp was engaging might be illegal. A copy of the pertinent portion of the transcript is attached, with the clarifying language underscored. I did not discuss this matter with Mr. Gerth, or rebut his statement in the article, because it would have been improper to discuss with the press my reasons for reaching the decision I did. At the time, of course, I did not realize that the transcript of our meeting was already in the hands of the press.

Finally, I would like to correct a statement of fact that I made at the hearing. I stated that the $46 million in Citicorp earnings involved in the "parking" transactions was only ½ of one percent of Citicorp's aggregate net earnings. In fact, it was approximately 2 percent of Citicorp's net earnings.

Sincerely,

BEVIS LONGSTRETH.

Attachment.

SHAD. Commissioner Longstreth?

LONGSTRETH. I share the agonies around the table because it is a tough case, an awfully tough case. I guess my bottom line is that I, in the exercise of prosecutorial discretion, I guess I wouldn't bring the case.

SHAD. Would not?

LONGSTRETH. Would not. I think, and I say that because quantitatively I think it's hard to show materiality in terms of the money made and also in terms of the risk. I think that evaluating the risk is within a business judgment; and, if you operate within a business judgment and you don't feel the risk was material, I don't see, I think it's very hard for the SEC to prove that you were wrong, at least in a case as fuzzy as this. Although, in thinking about this I was reminded of our policies regarding insider trading and the risk to the Swiss banks in this country if you follow the Pollack decision of applying the laws rather than ours in shielding people who are insider trading, because one of the suggestions was, and I think it originated in the Enforcement Division, was that we ought to sanction them by keeping them out of here entirely. And if you look at the foreign control laws in some of these juris-

dictions, they mean business. And they, those laws are established, to protect, I take it, the banking system of those countries. So, *if the Citibank top management has decided that they were going to just evade those laws,* you might have a quantitative materiality problem. *But even if you didn't, do you have a qualitative materiality problem? And I think you do, but we don't have the case that quite gets there, in my judgment, because* you don't know the top management knew about it and, if they did, *they may have been advised that it's, in other words, it may have been within the business judgment rule to decide that the law's unclear and what we're doing may be okay.* So, it doesn't quite all come together, although I agree wth the comments that have been made here about the sleazy character of this thing. It does have an odor to it, I think, and the odor is made stronger by the Shearman and Sterling memo. But that's so cleverly done you can't really get a handle on that. [Emphasis supplied.]

LOOMIS. It's very hard to get a handle on it.

LONGSTRETH. I mean, that's what I'd like to get a handle on, frankly, because it's not a forthright report. It's not what Millbank Tweed did for Gulf Oil. It doesn't come close. And I don't like the idea that the passage of time can mean that our hands are tied because that's certainly frustrating. That just encourages people to delay until really the Commission (?). But, having said all that, I, I don't think it's a good case now to bring for the various reasons introduced.

Senator SARBANES. Mr. Treadway, I was interested in looking over your statement as to how much pro bono legal work you may have done or other citizen involvement. Has there been any to speak of?

Mr. TREADWAY. How much I have done?

Senator SARBANES. Yes.

Mr. TREADWAY. Senator, I don't think I have ever handled a pro bono case personally.

Senator SARBANES. And have you been active in Bar Association activities?

Mr. TREADWAY. I have been active in various committees in the business and the securities and banking area in the D.C. Bar.

Senator SARBANES. And what about involvement as a citizen in the community in terms of various "do-good" activities? Has there been any of those?

Mr. TREADWAY. Well, no, I can't point to any in particular, Senator.

Senator SARBANES. Well, without making a big to-do of it, I have to say that I find that a little disappointing in the résumé. I think you're an extremely able person. You were tops in your class in law school and editor of the Law Review and you had a very distinguished private career at the bar and I guess I was really prompted down this path by the chairman's question to you as to why you would want to give a lot of this up now to undertake public service. And my own attitude on that, particularly in the absence of the things I've just been talking about, is that maybe you sort of owe it to the country. I mean, you're a pretty able fellow and if the country is going to work good people have to help make it work, and maybe you owe it to the country.

Mr. TREADWAY. Well, I never thought about it in those terms, but perhaps so.

Senator SARBANES. I want to just leave two words of caution. One, I have a little trouble with the sunsetting of all the regulations which the chairman made reference to. I'm fearful that you'll spend all your time trying to see whether the Sun is setting or the Sun is rising, particularly an organization like the SEC which has to build up over time a whole body of law through its regulations. I

think we need to have more oversight and to take areas where in fact they may no longer be applicable and explore them and remove them, but I think if all of your regulations were to sunset at a particular point it would just place an enormous burden of work on you.

The CHAIRMAN. If the Senator would yield, I'd like him to know that I was not suggesting anything. I was talking about the concept. I think there are some particular areas where that might be considered, but I want to assure you that in asking that question I was not suggesting that the entire body of SEC regulations be sunsetted. We'd need 97 Commissioners and a staff of 150,000.

Senator SARBANES. The other thing is on this structuring of the financial markets. I feel very keenly that's a congressional decision. The structure that's been in effect is a consequence of congressional decision and if it's to be altered I think it has to be done by the Congress considering all of the factors that ought to be taken into account. I don't think market forces ought to drive us to a decision which if we sat back and looked at it very carefully we would conclude is not the best way for financial institutional arrangements to go.

Mr. TREADWAY. I didn't mean to suggest that it ought not to be a congressional decision. What I was trying to say was that the market is moving so fast that sometimes it's like a game of hopscotch and lines get jumped over and events have to be undone.

Senator SARBANES. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Sarbanes.

Gentlemen, do either one of you have anything you'd like to say in conclusion?

[No response.]

The CHAIRMAN. Thank you very much. We appreciate you being here today.

The committee is adjourned.

(Whereupon, at 10:55 a.m., the hearing was adjourned.)

[Biographical material on the nominees follow:]

# STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Longstreth (LAST) Bevis (FIRST) — (OTHER)

Position to which nominated: Commissioner/Securities & Exchange Comm. Date of nomination: June 23, 1982

Date of birth: 29 (DAY) 1 (MONTH) 34 (YEAR) Place of birth: New York, New York

Marital status: Married Full name of spouse: Clara St. John Longstreth

Name and ages of children: Katherine Shiras Longstreth 16 yrs.
Thomas Day Longstreth 14 yrs.
Benjamin Hoyt Longstreth 11 yrs.

Education:

| Institution | Dates attended | Degrees received | Dates of degrees |
|---|---|---|---|
| Harvard Law School | 1958-1961 | LL.M. | 6/61 |
| Princeton University | 1952-1956 | BSE | 6/56 |
| The Hill School | 1948-1952 | H.S. Diploma | 6/52 |
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Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Princeton University - Cum Laude

**Memberships:** List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

| Organization | Office held (if any) | Dates |
|---|---|---|
| See Attached Schedule A | | |
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**Employment record:** List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

See Attached Schedule B

SCHEDULE A

| ORGANIZATION | OFFICE HELD (if any) | DATES |
|---|---|---|
| Columbia Law School | Lecturer at Law | 1975 to 1981 |
| American Bar Association | None | 1963 to present |
| Business Bankruptcy Committee of the American Bar Association | None | 1980 to present |
| New York City Bar Association | None | 1962 to present |
| Special Committee on Science and Law of the New York City Bar Association | Secretary | 1962 to 1967 |
| Committee on Professional Responsibility of the New York City Bar Association | None | 1976 to 1979 |
| Committee on the Lawyer's Pro Bono Obligations of the New York City Bar Association | None | 1977 to 1980 |
| Phipps Houses, Inc. | Director | 1980 to present |
| Symphony Space, Inc. | Director | 1980 to present |
| The Ford Foundation | Consultant | 1971 to 1972 |
| New York State Identification and Intelligence System | Privacy Consultant | 1970 to 1970 |
| Rockefeller Family Fund | Finance Committee | 1972 to 1981 |
| Bennington College | Trustee | 1973 to 1980 |
| Ethical Culture Schools | Finance Committee | 1980 to 1981 |
| West Side Montessori School | Trustee<br>President of the Board of Trustees | 1972 to 1977<br>1974 to 1977 |
| Community Law Offices | Trustee | 1968 to 1971 |
| Union Settlement Association | Director<br>Chairman of the Board | 1963 to 1973<br>1966 to 1968 |

SCHEDULE A (continued)

| ORGANIZATION | OFFICE HELD (if any) | DATES |
|---|---|---|
| Bronxville Bombers Hockey Team | None | 1961 to 1965 |
| Bronx Zoo | None | 1972 to 1981 |
| Century Association | None | 1974 to present |
| Garrison Art Center | None | 1970 to present |
| Harvard Club | None | 1962 to 1974 |
| Highlands Country Club | None | 1980 to 1981 |
| National Audubon Society | None | 1972 to present |
| New York Botanical Gardens | None | 1969 to 1981 |
| New York Road Runners Club | None | 1977 to present |
| Museum of Modern Art | None | 1962 to 1965 |
| American Law Institute | None | 1980 to present |
| Washington Road Runners Club | None | 1981 to present |

SCHEDULE B

Employment

| Time Period | Employer | Position |
|---|---|---|
| 7/81 to Present | U.S. Securities and Exchange Commission<br>500 North Capitol Street, N.W.<br>Washington, D.C. 20549 | Commissioner |
| 9/61 to 7/81 | Debevoise & Plimpton<br>299 Park Avenue<br>New York, New York 10171 | Lawyer |
| 1975 to 6/81 | Columbia University School of Law<br>435 W. 116th St.<br>New York, New York 10027 | Lecturer at Law |
| 7/56 to 8/58 | United States Marine Corps.<br>Quantico, VA and 29 Palms, CA | 2nd and 1st Lieutenant |
| 6/59 to 8/59 | Abraham L. Bienstock<br>30 Broad Street<br>New York, New York | Law Clerk |

**Government experience:** List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

U.S. Securities and Exchange Commission - Commissioner

N.Y. State Identification and Intelligence System - Privacy Consultant

United States Marine Corps. - Served as Lieutenant in anti-aircraft battery stationed at 29 Palms, CA.

The foregoing response does not include representation of clients before Federal, State and local governments.

**Published writings:** List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Attached Schedule C

**Political affiliations and activities:** List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I am a registered Democrat.

SCHEDULE C

Publications

With William Everdell, Some Special Problems Raised by Debt Financing of Corporations Under Common Control, 17 Business Lawyer 500 (April 1962).

Behavioral Research Using Students: A Privacy Issue for Schools, 76 The School Revew 1 (March 1968).

With H. David Rosenbloom, Corporate Social Responsibility and the Institutional Investor (Praeger Publishers 1972).

Disclosure and the Social Aspects of Business Behavior, 28 Business Lawyer 215 (Special Issue, March 1973).

Social Aspects of Business Behavior - An Issue for Institutional Investors, 112 Trusts & Estates 322 (May 1973).

The Impact of Section 4944 on Foundation Investment Policy, PLI Fifth Biennial Conference on Tax Planning for Private Foundations, Tax Exempt Status and Charitable Contributions (1974).

Shareholder Proposal Under '34 Act, Rule 14A-8, PLI Eighth Annual Institute on Securities Regulation (Mundheim editor 1977).

With John G. Koeltl, Market Information Revisited, 11 The Review of Securities Regulations 843 (October 1978).

With Howard R. Dressner, 150th Birthday Tribute to Prudent-Man Rule, New York Law Journal (January 2, 1981).

Reliance on Advice of Counsel as a Defense to Securities Law Violations, 37 Business Lawyer 1185 (April 1982).

SEC Battle Against Insider Trading Is Worth the Effort, Legal Times (May 10, 1982) at 16.

Regulation by the "Pinch," Not the Handful, Enterprise (May 1982), at 9.

**Political contributions:** Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

None

**Qualifications:** State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Attached Schedule D

**Future employment relationships:**

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

See Attached Schedule E

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

SCHEDULE D

Qualifications

Over the past 20 years, I have devoted a major portion of my professional career to the Federal securities laws and the corporate laws under which issuers of securities are organized and operate. My work has involved representation of a broad spectrum of clients affected in different ways by the securities laws and regulations administered by the Securities and Exchange Commission. These clients have included industrial companies, mutual funds, investment advisers, venture capital partnerships and various types of institutional investors.

Since 1975 I have been a Lecturer at Columbia Law School, where I have taught a seminar on the corporation in modern society. I have spoken on the securities laws at the Practicing Law Institute and other seminars and was a member of my firm's securities practice committee. In addition, I served on the finance committees of several organizations, including the Rockefeller Family Fund.

During my eleven months service as a Commissioner of the SEC, I have participated in the discussion and resolution of numerous issues affecting the responsibilities of the Commission. Many of these issuers are enduring; they will continue to confront the Commission and its constituencies in a variety of forms. My experience in dealing with these questions over the time I have spent with the Commission has left me even more qualified to do so in the future.

SCHEDULE E

Future Employment Relationships

Prior to taking my oath of office as a Commissioner in 1981, I resigned as a partner of Debevoise & Plimpton. I also severed all other connections with this firm except as follows:

(a) Under the firm's retirement plan, I became entitled to receive forty-eight monthly payments of $5,556.68, commencing in August of 1981.

(b) I have remained as a participant in the firm's major medical and group life insurance plans, for which I continue to pay the full premiums.

(c) I have retained my investment in the firm's Keogh Plan. As of May 31, 1982, my investment in such Plan had a market value of $ 79,863.

**Potential conflicts of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None, except for the retirement plan payments referred to in paragraph (a) of Schedule E and the investment in Pelf Partners described in item 2 of Schedule F.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None. See Attached Schedule F

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

As a lawyer in private practice I have represented clients before the Securities and Exchange Commission, the Treasury Department, the Chrysler Corporation Loan Guarantee Board and the Federal Courts.

SCHEDULE F

My wife, dependent children and I hold the following investments:

1. Blind Trust. All securities investments held by my wife, dependent children and me and not separately mentioned herein have been transferred to a qualified, diversified blind trust, which was created on July 21, 1981.

2. Pelf Partners. This is a partnership formed by a number of the partners of Debevoise & Plimpton as a vehicle for a variety of tax shelter investments. The underlying investments, in which I have an approximately $15,000 interest through Pelf Partners, consist of real estate and other, similar properties not involving publicly-traded securities. I am in the process of transferring my interest in Pelf Partners to a trust, established for this purpose and administered by an independent trustee. I will be the beneficiary of the trust.

3. Keogh Plan. I have retained my interest in a Keogh Plan maintained by Scudder, Stevens & Clark. See Item (c) to Schedule E.

4. Family Trusts. I have retained my interest as a life beneficiary in two irrevocable family trusts. The assets of these trusts are invested in various debt and equity securities. I have no power to direct the investment of the assets of either trust. See Schedule G.

5. All-Savers Certificate. In October of 1981, I purchased an All Savers Certificate, maturing October 3, 1982, from First American Bank, N.A.

In view of the steps taken with respect to these investments, as described herein and in Schedule G, none of these investments involves potential conflicts of interest with my position as a Commissioner.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None. As a member of the Securities and Exchange Commission, I have participated in the formulation and transmittal of the Commission's position on a variety of pending and proposed legislation.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See attached Schedule C

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

SCHEDULE G

Resolution of Conflicts of Interest

As noted above, I have resigned as a partner of Debevoise & Plimpton. In addition, as a Commissioner, I intend to disqualify and recuse myself from matters before the Commission in the nature of a request on behalf of a specific party for an exemption from a rule or statute of general applicability, or matters involving the institution of enforcement proceeding, under the following circumstances:

(a) where Debevoise & Plimpton represents any party in such matter, or

(b) where I had any connection with or gained significant knowledge about, such matter while I was at Debevoise & Plimpton.

In addition, I intend to disqualify and recuse myself, on a case-by-case basis, with respect to any matter, where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest. In general, it is not my intention to recuse myself from general policy considerations or rule-making proceedings.

On July 29, 1981, Chairman John S.R. Shad granted me a waiver, pursuant to the provisions of 18 U.S.C. 208(b) and Executive Order 11222, to eliminate the applicability of the federal conflict of interest law, 18 U.S.C. 208(a), to the assets of the two family trusts described in item 4 to Schedule F. With respect to one of the trusts (which is invested, in the discretion of an independent trustee, in a substantially diversified portfolio), this waiver is conditioned on (i) the value of no single trust asset exceeding 1% of my net worth and (ii) my requesting that the trustee of such trust maintain a diversified portfolio. I have made such request. The remaining trust is invested in several common trust funds maintained by the trustee bank.

On August 3, 1981, James C. Foster, Director of Personnel of the Securities and Exchange Commission, granted me a waiver from the operation of Rule 200.735-5(k) of the Commission's Conduct Regulations, to permit me to continue to receive dividends on my Keogh Plan investment in securities rather than cash. Receipt of such dividends in cash would have jeopardized the continued qualification of my investment in this Keogh Plan under the Internal Revenue Code.

# STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Treadway (LAST) James (FIRST) C., Jr. (OTHER)

Position to which nominated: Commissioner Securities and Exchange Commission Date of nomination: July , 1982

Date of birth: 21 (DAY) May (MONTH) 1943 (YEAR) Place of birth: Anderson, South Carolina

Marital status: Married Full name of spouse: Susan Pepper Davis Treadway

Name and ages of children: Elizabeth Pepper Treadway (9 years)
Caroline Worrell Treadway (6 years)

Education:

| Institution | Dates attended | Degrees received | Dates of degrees |
|---|---|---|---|
| Washington & Lee University | 1964-67 | LL.B. | January 27, 1967 |
| University of Georgia | 1962-64 | - | - |
| Rollins College | 1961-62 | - | - |
| Union (S.C.) High School | 1957-61 | Diploma | June, 1961 |
| Union County (S.C.) Public Schools | 1949-57 | - | - |
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Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

See attached Schedule A.

Schedule A

Honors and Awards

List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Law degree conferred summa cum laude

John W. Davis Award (Conferred upon graduating law student with highest grade average for three years of law school)

Editor-in-Chief, and prior thereto, Comments Editor and Contributor, Washington & Lee University Law Review

Phi Beta Kappa

Order of the Coif

Omicron Delta Kappa

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

| Organization | Office held (if any) | Dates |
|---|---|---|
| See attached Schedule B. | | |
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Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

See attached Schedule C.

Schedule B

Memberships

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

| Organization | Office Held | Dates |
|---|---|---|
| American Bar Association | Member | 1967 - Present |
| District of Columbia Bar Association | Member | 1970 - Present |
| Massachusetts Bar Association | Member | 1968 - Present |
| State Bar of Georgia | Member | 1967 - Present |
| Phi Beta Kappa | Member | 1967 - Present |
| Order of the Coif | Member | 1967 - Present |
| Omicron Delta Kappa | Member | 1967 - Present |
| Phi Delta Phi | Member | 1965 - Present |
| University Club | Member | 1975 - Present |
| City Tavern Association | Member | 1970 - Present |
| Mt. Vernon Swimming Association | Member | 1976 - Present |
| National Cathederal School Tennis Club | Member | 1970 - Present |
| National Geographic Society | Member | 1976 - Present |
| Peppercorn Farm Club | Member | 1979 - Present |
| Henry Foundation For Botanical Research | Member | 1973 - Present |
| Washington & Lee University Alumni Association | Member | 1967 - Present |

Schedule C

Employment Record

List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

| Dates | Employer and Address | Type of Work |
|---|---|---|
| 10-75 to Present | Dickstein, Shapiro & Morin<br>2101 L St., N.W.<br>Washington, D.C. | Attorney<br>(Partner) |
| 8-74 to 9-75 | Saunders & Treadway<br>1750 New York Ave., N.W.<br>Washington, D.C. | Attorney<br>(Partner) |
| 10-72 to 7-74 | Dickstein, Shapiro & Morin<br>2101 L St., N.W.<br>Washington, D.C. | Attorney<br>(Partner) |
| 1-70 to 9-72 | Gadsby & Hannah<br>1700 Pennsylvania Ave., N.W.<br>Washington, D.C. | Attorney<br>(Associate) |
| 4-68 to 1-70 | Gadsby & Hannah<br>75 Federal Street<br>Boston, Massachusetts | Attorney<br>(Associate) |
| 2-67 to 4-68 | Candler, Cox, McClain & Andrews<br>41 Marietta Street<br>Atlanta, Georgia | Attorney<br>(Associate) |
| 6-66 to 8-66 | Candler, Cox, McClain & Andrews<br>41 Marietta Street<br>Atlanta, Georgia | Law Clerk |
| 6-55 to 8-65 | Union, S.C. High School<br>E. Main Street<br>Union, S.C. | Summer School Teacher |
| 6-64 to 8-64 | Union County, S.C.<br>E. Main Street<br>Union, S.C. | Case Worker |
| 12-63 to 2-64 | Deering-Milliken, Inc.<br>Williams Street<br>Union, S.C. | Assistant in Industrial Engineering Department |

**Government experience:** List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Consultant to advisory committee involved in rewriting the Massachusetts state securities law (1968-69). Employee, Union County, South Carolina (see Schedule C - Employment Record).

**Published writings:** List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"SEC Enforcement Techniques: Expanding and Exotic Forms of Ancillary Relief," Vol. XXXII, No. 3, Summer, 1975, Washington and Lee Law Review; "Recent Developments Under Section 16(b) of the Securities Exchange Act of 1934," Vol. XVII, No. 3, New York Law Forum," 1971; "The Boating Boom: Admiralty Jurisdiction Inland," Vol. XXIII, No. 1, Washington and Lee Law Review, Spring, 1966; "Mandatory Package Licensing As Patent Misuse," Vol. XII, No. 2, Washington and Lee Law Review, Fall, 1965.

**Political affiliations and activities:** List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered Republican.

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

Dickstein, Shapiro & Morin Political Action Committee Contributions:

1982 - $800; 1981 - $600; 1980 - $600.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See attached Schedule D.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

See attached Schedule E.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Schedule D

Qualifications

State fully your qualifications to serve in the position to which you have been named.

During the past fifteen years, I have engaged in a diversified securities law and corporate finance practice. I have represented clients in connection with the registration of debt and equity securities under the Securities Act of 1933, registration and reporting under the Securities Exchange Act of 1934, registration, reporting, applications for exemptions and other matters under the Investment Company Act of 1940 and the Investment Advisers Act of 1940, stock and asset acquisitions and mergers involving both public and private companies, leveraged buy-outs, "going-private" transactions, private placements of debt and equity securities, and negotiations of and participations in numerous corporate transactions. Clients I have represented include commercial and industrial companies, registered broker-dealers, registered investment companies and investment advisers, a regional and a foreign stock exchange, and officers and directors of public companies. In addition, I have represented banks and savings and loan associations, and investment banking firms acting on behalf of such entities, in connection with various matters, including regulatory matters, capital financings, and conversions of mutual thrift institutions to stock form. To a more limited extent I also have represented clients in connection with tax-exempt financings and federal tax matters.

In addition to the foregoing practice, which primarily has been of a transactional nature, I have represented various defendants, potential defendants, and witnesses in Securities and Exchange Commission enforcement investigations, proceedings and litigation.

I also have written articles and participated in panels and discussions on the Federal Securities Law.

Schedule E

Future Employment Relationships

Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Prior to taking my oath of office as a Commissioner, I will resign as a partner of Dickstein, Shapiro & Morin. I will sever all connections with this firm except as follows:

(a) I will retain a contractual right to share in certain contingent fees (if any) ultimately received by Dickstein, Shapiro & Morin arising from cases which Dickstein, Shapiro & Morin is handling as of the date of my withdrawal from that firm. Such fees (if any) are not presently determinable. See Schedule K.

(b) I currently participate in the H.R. 10 (Keough) Retirement Plan of Dickstein, Shapiro & Morin, with a vested account of approximately $16,200 as of December 31, 1981. I will continue to retain this interest notwithstanding my resignation as a partner in Dickstein, Shapiro & Morin.

(c) I expect to maintain social contacts with partners and associates in the firm of Dickstein, Shapiro & Morin.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None, except as set forth in Schedule E.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

See attached Schedule F.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

As an attorney, I have represented clients before the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Civil Aeronautics Board, the Internal Revenue Service, and the Department of Labor.

Schedule F

Investments, Etc.

List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

I or my wife have investments in the following publicly-owned companies:

United States Fidelity and Guaranty Company

TRW, Inc.

General Motors Corporation

General Electric Corporation

Phillips Petroleum Corporation

Mobil Oil Co.

Ingersoll Rand, Inc.

Merck, Sharp & Dohme, Inc.

Pennsylvania Power & Light

Winn-Dixie Stores, Inc.

Sears Roebuck & Co.

Bio-Gas of Colorado, Inc.

McCullough Oil Co.

First Western Financial Corp.

I am a limited partner in a limited partnership known as "Towner Petroleum Corporation Leveraged Private Program 1980 L " (a privately-owned limited partnership engaged in exploration for oil and gas). Although this partnership is privately-owned, Towner Petroleum Corporation, the corporate general partner, is a publicly-owned corporation.

Schedule F (continued)

I am an investor in certain privately-held partnerships or organizations not registered with the Securities and Exchange Commission.

My wife and children are contingent beneficiaries of various trusts, but they have no present beneficial interest in the corpus or income of such trusts. I, my wife, and children are unaware of the terms of such trusts or the composition of the assets of such trusts. If I am confirmed, and if during my term as a Commissioner an event occurs which causes the interest(s) of my wife or children in any such trusts to become vested, any corpus distributed to them which consists of publicly-traded securities will be placed in a qualified blind trust.

From September, 1978 until January, 1981 I was a limited partner in Bears, Stearns & Co., a New York Stock Exchange member firm, but only in my capacity as a trustee. I neither had nor have any beneficial interest in that trust. I continue to serve as the sole trustee of that trust, which presently has a brokerage account at Bear Stearns & Co., which is classified as a subordinated account and is considered part of the capital of Bear Stearns & Co. under the net capital rules of the New York Stock Exchange. I intend to resign as trustee if confirmed.

Also see Schedule E.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See attached Schedule G.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

Schedule G

Resolution of Conflicts of Interests

Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I intend to resign as a partner of Dickstein, Shapiro & Morin if confirmed. In addition, as a Commissioner, I intend to disqualify and recuse myself from matters before the Commission in the nature of a request on behalf of a specific party for an exemption from a rule or statute of general applicability, or matters involving the institution of enforcement proceedings, under the following circumstances:

(a) where Dickstein, Shapiro & Morin represents any party involved in the matter, or

(b) where I had any connection or gained significant knowledge while I was at Dickstein, Shapiro & Morin.

In addition, I intend to disqualify and recuse myself, on a case-by-case basis, with respect to any matter, where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest. In general, it is not my intention to recuse myself from general policy considerations or rulemaking proceedings.

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